

Adopted by House 4-11-2013

SB265 H JUD AM 4-9 #1

The Committee on the Judiciary moves to amend the bill on page three, following the enacting section, by striking out the remainder of the bill and inserting in lieu thereof the following language:

"ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH AND HUMAN RESOURCES TO PROMULGATE LEGISLATIVE RULES.

§64-5-1. Bureau for Public Health.

(a) The legislative rule filed in the State Register on August 31, 2012, authorized under the authority of section four, article one, chapter sixteen, of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 10, 2013, relating to the Department of Health and Human Resources (reportable diseases, events and conditions, 64 CSR 7), is authorized with the following amendments:

On page twenty-four, subsection 9.1., by striking out the words "the reporting" and inserting in lieu thereof the words "the access";

On page twenty-five, subsection 9.2., by striking out the words "be reported" and inserting in lieu thereof the words "be made available";

1 On page twenty-five, subsection 9.2., by striking out the
2 words "the reporting" and inserting in lieu thereof the words "the
3 access";

4 On page twenty-five, subsection 9.2., after the word
5 "activities" by inserting the following: "consistent with the
6 mission of the bureau. The responsibility for communication with
7 healthcare facilities regarding data collection, data quality and
8 completeness rests with the Office of Epidemiology and Prevention
9 Services within the Bureau for Public Health";

10 And,

11 On page twenty-five, by striking out all of subsection 9.3.
12 and renumbering the remaining subsection.

13 (b) The legislative rule filed in the State Register on June
14 29, 2012, authorized under the authority of section four, article
15 one, chapter sixteen, of this code, modified by the Department of
16 Health and Human Resources to meet the objections of the
17 Legislative Rule-Making Review Committee and refiled in the State
18 Register on November 15, 2012, relating to the Department of Health
19 and Human Resources (general sanitation, 64 CSR 18), is authorized
20 with the following amendment:

21 On page three, subdivision 2.13, by removing the period and
22 inserting the following, "Bed and Breakfast Inn."

23 (c) The legislative rule filed in the State Register on August
24 27, 2012, authorized under the authority of section five, article

1 seven, chapter sixteen, of this code, relating to the Department of
2 Health and Human Resources (Grade A pasturized milk, 64 CSR 34), is
3 authorized with the following amendment:

4 On page four, subdivision 2.1.i.1, by striking everything
5 after the word "sold" and inserting in lieu thereof the following:
6 "Unpasteurized milk produced in West Virginia may be sold, provided
7 that said unpasteurized milk is conspicuously labeled as
8 'Unpasteurized Raw WV Milk'."

9 (d) The legislative rule filed in the State Register on August
10 31, 2012, authorized under the authority of section one, article
11 eleven, chapter sixteen, of this code, modified by the Department
12 of Health and Human Resources to meet the objections of the
13 Legislative Rule-Making Review committee and refiled in the State
14 Register on January 10, 2013, relating to the Department of Health
15 and Human Resources (fees for services, 64 CSR 51), is authorized
16 with the following amendment:

17 On page eleven, subdivision 9.7, after the word "emergency",
18 by inserting a period and removing the underscored words "or as a
19 relevant factor associated with the provision of services and may
20 include but is not limited to, supply shortages, federal or other
21 funding restrictions of policy changes impacting the ability to
22 provide services".

23 (e) The legislative rule filed in the State Register on
24 October 11, 2012, authorized under the authority of section four,

1 article one, chapter sixteen, of this code, relating to the
2 Department of Health and Human Resources (regulation of opioid
3 treatment programs, 64 CSR 90), is repealed.

4 (f) The legislative rule filed in the State Register on August
5 27, 2012, authorized under the authority of section four, article
6 one, chapter sixteen, of this code, modified by the Department of
7 Health and Human Resources to meet the objections of the
8 Legislative Rule-Making Review Committee and refiled in the State
9 Register on January 10, 2013, relating to the Department of Health
10 and Human Resources (pulse oximetry newborn testing, 64 CSR 100),
11 is authorized with the following amendment:

12 On page two, subdivision 5.3, by striking out the words "the
13 closest" and inserting in lieu thereof the word "an".

14 **§64-5-2. Department of Health and Human Resources.**

15 (a) The legislative rule filed in the State Register on August
16 31, 2012, authorized under the authority of section one, article
17 eleven, chapter sixteen, of this code, modified by the Department
18 of Health and Human Resources to meet the objections of the
19 Legislative Rule-Making Review Committee and refiled in the State
20 Register on February 5, 2013, relating to the Department of Health
21 and Human Resources (regulation of opioid treatment programs, 69
22 CSR 7), is authorized with the following amendment:

23 On page fourteen by striking section 7.3 and inserting a new
24 section 7.3 to read as follows:

1 "7.3. License Fees and Inspection Costs.

2 7.3.a. All applications for an initial or renewed license
3 shall be accompanied by a non-refundable license fee in the amount
4 required by this rule. The annual renewal fee is based upon the
5 average daily total census of the program. In addition to the set
6 fee, the annual renewal fee shall be adjusted on the first day of
7 June of each year to correspond with increases in the consumer
8 price index. The base amounts for initial and renewal fees are as
9 follows:

10 7.3.a.1. Initial license fee - \$250;

11 7.3.a.2. Renewal fee - fewer than 500 patients - \$500
12 plus adjustment;

13 7.3.a.3. Renewal fee - 500 to 1,000 patients - \$1,000
14 plus adjustment;

15 7.3.a.4. Renewal fee - more than 1,000 patients - \$1,500 plus
16 adjustment.

17 7.3.b. An opioid treatment program shall pay for the cost of
18 the initial inspection made by the secretary prior to issuing a
19 license. The cost of the initial inspection is \$400, and shall be
20 billed to the applicant by the secretary within five business days
21 after the inspection. The cost of the initial inspection must be
22 paid in full by the applicant before a license may be issued.

23 7.3c. The Office of Health Facility Licensure and
24 Certification shall use the fee for increased oversight on opioid

1 treatment programs.”;

2 On page thirty-two by inserting a new subdivision 18.3.j. to
3 read as follows:

4 “18.3.j. There shall be one (1) counselor for every forty (40)
5 clients in the program.”;

6 On page fifty-three by striking section 30.8 and inserting a
7 new section 30.8 to read as follows:

8 “30.8. Each opioid treatment program must provide counseling
9 on preventing exposure to, and the transmission of, human
10 immunodeficiency virus (HIV) disease and Hepatitis C disease for
11 each patient admitted or re-admitted to maintenance or
12 detoxification treatment. Services rendered to patients with HIV
13 disease shall comply with the requirements of section 44 of this
14 rule.”;

15 On page fifty-four by striking subdivision 31.4.a and
16 inserting a new subdivision 31.4.a to read as follows:

17 “31.4.a. Preventing exposure to, and the transmission of, HIV
18 disease and Hepatitis C disease for each patient admitted or
19 readmitted to maintenance or detoxification treatment; and”;

20 On page fifty-six by striking subdivision 32.2.a and inserting
21 a new subdivision 32.2.a to read as follows:

22 “32.2.a. The initial post-admission assessment shall consist
23 of a comprehensive medical evaluation, which shall include, but not
24 be limited to:

1 32.2.a.1. A comprehensive physical evaluation;
2 32.2.a.2. A comprehensive psychiatric evaluation,
3 including mental status examination and psychiatric history;
4 32.2.a.3. A personal and family medical history;
5 32.2.a.4. A comprehensive history of substance abuse,
6 both personal and family;
7 32.2.a.5. A tuberculosis skin test and chest X-ray, if
8 skin test is positive;
9 32.2.a.6. A screening test for syphilis;
10 32.2.a.7. A Hepatitis C test;
11 32.2.a.8. An HIV test; and
12 32.2.a.9. Other tests as necessary or appropriate (e.g.,
13 CBC, EKG, chest X-ray, pap smear, hepatitis B surface antigen and
14 hepatitis B antibody testing).”;

15 On page seventy by striking section 37.14 and inserting a new
16 section 37.14 to read as follows:

17 “37.14 The state authority may approve exceptional
18 unsupervised-medication dosages, including alternative medications,
19 on a case-by-case basis upon application for an exemption by the
20 program physician. Any authorization for exceptions shall be
21 consistent with guidelines and protocols of approved authorities,
22 provided that the authority may not grant any exceptions during a
23 calendar month which exceed three (3) exceptions or ten (10)

1 percent of the number of patients enrolled in the program on the
2 last day of the previous month, whichever is greater.”;

3 On page seventy-three by inserting a new subdivision 38.14 to
4 read as follows:

5 “38.14 Maintenance treatment shall be discontinued within two
6 (2) continuous years after the treatment is begun unless, based
7 upon the clinical judgement of the medical director or program
8 physician and staff which shall be recorded in the client's record
9 by the medical director or program physician, the client's status
10 indicates that the treatment should be continued for a longer
11 period of time because discontinuance from treatment would lead to
12 a return to illicit opiate abuse or dependence.”;

13 On page seventy-five by striking subdivision 41.2.d.3 and
14 inserting a new subdivision 41.2.d.3 to read as follows:

15 “41.2.d.3. When using urine as a screening mechanism, all
16 patient drug testing shall be observed to minimize the chance of
17 adulterating or substituting another individual's urine.”;

18 And,

19 On page eighty-one by striking subdivision 44.5.d.1. and
20 inserting a new subdivision 44.5.d.1. to read as follows:

21 “44.5.d.1. Maintenance treatment dosage levels of pregnant
22 clients shall be maintained at the lowest possible dosage level.”

23 (b) The legislative rule filed in the State Register on
24 January 7, 2013, authorized under the authority of section nine,

1 article five-h, chapter sixteen, of this code, relating to the
2 Department of Health and Human Resources (chronic pain management
3 clinic licensure, 69 CSR 8), is authorized with the following
4 amendments:

5 On page one, subsection 1.4, line eleven, following the number
6 "2013.", by inserting the following words:

7 "This rule is effective upon the date specified in an
8 emergency rule promulgated by the Department of Health and Human
9 Resources as being the date funding for implementation of Chronic
10 Pain Management Clinic Licensure will become available pursuant to
11 a duly enacted appropriation bill authorizing the expenditure of
12 funds for that purpose.";

13 On page four, subsection 3.1., by striking out all of
14 subdivisions 3.1.a., 3.1.b., 3.1.c. and 3.1.d. and inserting in
15 lieu thereof the following:

16 3.1.a. The primary component of the medical practice of the
17 clinic, facility or office is treatment of chronic pain for non-
18 malignant conditions;

19 3.1.b. More than fifty percent of patients in any one month of
20 the prescribers are provided treatment for chronic pain for
21 nonmalignant conditions and are prescribed, administered or
22 dispensed tramadol, carisoprodol, opioid drug products or other
23 Schedule II or Schedule III controlled substances for such
24 diagnosis;

1 3.1.c. The calculation of more than fifty percent of patients
2 will be calculated by dividing the number of unique patient
3 encounters at the clinic, facility or office during any one month
4 for a diagnosis of chronic nonmalignant pain and pursuant to such
5 diagnosis of chronic nonmalignant pain were prescribed,
6 administered or dispensed tramadol, carisoprodol, opioid drugs or
7 other Scheduled II or Scheduled III controlled substances by the
8 total number of all patient encounters at the clinic, facility or
9 office during any month; and

10 3.1.d. Patients receiving tramadol, carisoprodol, opioid drug
11 products or other Schedule II or Schedule III controlled substances
12 for treatment of an injury or illness that lasts or is expected to
13 last thirty days or less shall not be included in the calculation
14 of more than fifty percent of all patients." and renumbering the
15 remaining subdivisions;

16 On page five, by inserting a new paragraph, 3.2.i.2., to read
17 as follows:

18 "3.2.i.2. Medical practices, clinics or offices in which a
19 physician treats an average of 20 or fewer patients a day during
20 any month and with any diagnosis and, in which the physician holds
21 a Competency Certification in Controlled Substances Management.";

22 And,

1 On page thirteen, subparagraph 6.5.b.2.B., after the words
2 “Osteopathic Specialist;” by inserting the words “hold Competency
3 Certification in Controlled Substances Management;”.

4 (c) The legislative rule filed in the State Register on August
5 30, 2012, authorized under the authority of section four, article
6 two-b, chapter forty-nine, of this code, modified by the Department
7 of Health and Human Resources to meet the objections of the
8 Legislative Rule-Making Review Committee and refiled in the State
9 Register on January 15, 2013, relating to the Department of Health
10 and Human Resources (minimum licensing requirements for residential
11 child care and treatment facilities for children and transitioning
12 adults in West Virginia, 78 CSR 3), is authorized, with the
13 following amendment:

14 On page fifty-two, paragraph 11.2.a.3., line five, by striking
15 out the word “Training” and inserting the word “Certification”.

16 **§64-5-3. Health Care Authority.**

17 The legislative rule filed in the State Register on May 14,
18 2012, authorized under the authority of section seven, article
19 twenty-nine-g, chapter sixteen, of this code, modified by the
20 Health Care Authority to meet the objections of the Legislative
21 Rule-Making Review Committee and refiled in the State Register on
22 July 19, 2012, relating to the Health Care Authority to promulgate
23 a legislative rule relating to (West Virginia Health Information
24 Network, 65 CSR 28), is authorized.

1 **§64-5-4. Bureau of Senior Services.**

2 The legislative rule filed in the State Register on August 31,
3 2012, authorized under the authority of section fifteen, article
4 five-p, chapter sixteen, of this code, modified by the Bureau of
5 Senior Services to meet the objections of the Legislative Rule-
6 making Review Committee and refiled in the State Register on
7 January 17, 2013, relating to the Bureau of Senior Services (in-
8 home care worker registry, 76 CSR 2), is authorized with the
9 following amendment:

10 On page two, subdivision 4.1(i), by striking the word
"training" and inserting the word "certification".